

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Jeffrey L. & Susan B. Laughrey)
 Dist. 3, Map 50B, Group A, Control Map 50B,) Hamilton County
 Parcel 8.09)
 Residential Property)
 Tax Year 2005)

INITIAL DECISION AND ORDER DISMISSING APPEAL

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$180,000	\$243,400	\$423,400	\$105,850

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on December 20, 2005 in Chattanooga, Tennessee. In attendance at the hearing were Jeffrey L. Laughrey, the appellant, and Hamilton County Property Assessor's representative Alan Johnson.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a lake front home located at 1906 Oak Cove Drive in Soddy Daisy, Tennessee.

I. Jurisdiction

The first issue before the administrative judge concerns jurisdiction. This issue arises from the fact that the disputed appraisal was not appealed to the Hamilton County Board of Equalization.

The Hamilton County Assessor of Property issued an assessment change notice in January of 2005 advising the taxpayer that his appraisal had been increased from \$334,000 to \$423,400.¹ The notice advised the taxpayer to contact the assessor of property between January 10, 2005 and January 21, 2005 to schedule a hearing. The notice also advised the taxpayer that an appeal form could be obtained online.

Mr. Laughrey testified that he and his wife are constantly out-of-state weekdays in conjunction with their employment. According to Mr. Laughrey, neither he nor his wife were aware of the notice until sometime after January 21, 2005. Thus, Mr. Laughrey assumed it was too late to appeal. Mr. Laughrey stated he subsequently filed a direct appeal with the State Board of Equalization July 7, 2005 after becoming aware of this avenue of appeal in conjunction with another assessment he appealed in Sequatchie County.

¹ It is unclear exactly what day the notice was issued.

The assessor maintained that Mr. Laughrey received notice in accordance with Tenn. Code Ann. § 67-5-508(a)(2) when the assessor published a notice in the Chattanooga Times Free Press advising all property owners that the Hamilton County Board of Equalization would be in session from June 1, 2005 through June 30, 2005. Although a copy of the notice was not introduced into evidence in this appeal, the notice was introduced in the *Appeal of Jane K. Lancaster* heard later that same day. The administrative judge finds it appropriate to take official notice of the legal notice and has appended a copy to this order for ease of reference.

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is permitted only if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e). The Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the 'reasonable cause' provisions to waive these requirements except where the failure to meet them is due to illness or other circumstances beyond the taxpayer's control.

Associated Pipeline Contractors, Inc., Williamson County, Tax Year 1992, Assessment Appeals Commission (Aug. 11, 1994). *See also John Orovets*, Cheatham County, Tax Year 1991, Assessment Appeals Commission (Dec. 3, 1993). Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Hamilton County Board of Equalization.

Respectfully, the administrative judge finds that the taxpayer failed to establish that he did not appeal to the Hamilton County Board of Equalization due to circumstances beyond his control. The administrative judge finds that a reasonably diligent taxpayer would have been aware of either the assessment change notice or published notice previously referred to.

Based upon the foregoing, the administrative judge finds that the State Board of Equalization lacks jurisdiction over this appeal and it must therefore be dismissed.

II. Value

Based upon the foregoing, the administrative judge finds it technically unnecessary to address the issue of value. However, the administrative judge finds it appropriate to note that even if the State Board of Equalization had jurisdiction over this appeal, the administrative judge would affirm the current appraisal of subject property.

The administrative judge finds that the taxpayer essentially made two arguments to support his \$401,000 contention of value. First, the taxpayer appended to his appeal form a refinancing appraisal which valued subject property at \$410,000 as of April 12, 2005. Second, the taxpayer asserted that the assessor's current appraisal of \$423,400 constitutes an excessive increase over the assessor's 2001 appraisal of \$331,000 and the taxpayer's August 31, 2001 purchase price of \$361,000.

The assessor contended that subject property had a fair market value of *at least* \$423,400 on the relevant assessment date of January 1, 2005. In support of this position, four comparable sales were introduced into evidence. Mr. Johnson maintained that the sales support a market value indication of \$464,000. Mr. Johnson also took issue with the refinancing appraisal.

Since the taxpayer is appealing from the determination of the Hamilton County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that the fair market value of subject property as of January 1, 2005 constitutes the relevant issue. The administrative judge finds that the Assessment Appeals Commission has repeatedly rejected arguments based upon the amount by which an appraisal has increased as a consequence of reappraisal. For example, the Commission rejected such an argument in *E.B. Kissell, Jr.* (Shelby County, Tax Years 1991 and 1992) reasoning in pertinent part as follows:

The rate of increase in the assessment of the subject property since the last reappraisal or even last year may be alarming but is not evidence that the value is wrong. It is conceivable that values may change dramatically for some properties, even over so short of time as a year. . .

The best evidence of the present value of a residential property is generally sales of properties comparable to the subject, comparable in features relevant to value. Perfect comparability is not required, but relevant differences should be explained and accounted for by reasonable adjustments. If evidence of a sale is presented without the required analysis of

comparability, it is difficult or impossible for us to use the sale as an indicator of value. . . .

Final Decision and Order at 2.

The administrative judge finds that the taxpayer's appraisal report cannot receive any weight because the appraiser was not present to testify and Mr. Johnson raised legitimate questions about the report. See *TRW Koyo* (Monroe Co., Tax Years 1992-1994) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

The taxpayer's representative offered into evidence an appraisal of the subject property prepared by Hop Bailey Co. Because the person who prepared the appraisal was not present to testify and be subject to cross-examination, the appraisal was marked as an exhibit for identification purposes only. . . .

* * *

. . . The commission also finds that because the person who prepared the written appraisal was not present to testify and be subject to cross-examination, the written report cannot be considered for evidentiary purposes. . . .

Final Decision and Order at 2.

ORDER

It is therefore ORDERED that this appeal be dismissed for lack of jurisdiction and the following value and assessment remain in effect for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$180,000	\$243,400	\$423,400	\$105,850

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

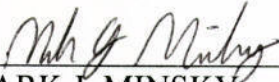
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order.

The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 12th day of January, 2006.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Jeffrey L. & Susan B. Laughrey
Bill Bennett, Assessor of Property

• • • Thursday, May 19, 2005 • F5

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Legal Notices

LEGAL NOTICE

NOTICE TO PROPERTY OWNERS

Pursuant to Section 67-5-508, Tennessee Code Annotated, the property assessment records of Hamilton County will be available for public inspection at the Assessor of Property Office, 6135 Heritage Park Drive during normal business hours. Any person desiring to inspect these records may do so at the appointed time and place.

The Hamilton County Board of Equalization will hold its annual organization meeting Wednesday, June 1, 2005, at 9:00 a.m. at 6135 Heritage Park Drive. The Board will accept appeals for tax year 2005 only until the last day of its 2005 regular session, which will be June 30, 2005. The Board will hold hearings during the month of June, as needed. Failure to appeal the assessment to the Board during this time period may result in the assessment becoming final without further right of appeal.

Persons desiring to appear before said Board must file written application on forms provided by the Board, which may be secured at 6135 Heritage Park Drive. The Board will determine whether the assessments will be raised or lowered.

Bill Bennett
Assessor of Property
Hamilton County

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